

149

13:16:38 1 If it would end up lower, then you've got a bad
13:16:43 2 one.

13:16:43 3 Q. Mr. Zoellner, in your previous --
13:16:45 4 MR. BURKE: Did you finish your
13:16:46 5 answer, Mr. Zoellner?

13:16:48 6 A. Yes.

13:16:48 7 Q. Mr. Zoellner, in your previous
13:16:50 8 answer you said something about one bid and
13:16:52 9 then referred to something being higher or
13:16:55 10 lower.

13:16:56 11 A. Well --

13:16:56 12 Q. Can I finish my question?

13:16:57 13 A. Yes.

13:16:58 14 Q. My question is: If you have one
13:16:59 15 bid, how can it be higher or lower to anything?

13:17:03 16 MR. BURKE: Objection to form.

13:17:04 17 A. No, comparison I'm talking about.
13:17:06 18 You're anxious to get more than one bid so that
13:17:08 19 you have a comparison to say whether this one
13:17:12 20 is better than this one.

13:17:14 21 Q. Right. And when you didn't have
13:17:15 22 more than one bid --

13:17:17 23 A. Yeah.

13:17:17 24 Q. -- you sold anyway, correct?

13:17:20 25 A. Yes.

151

13:18:18 1 opinion as to the process and whether it was in
13:18:20 2 the best interest of the shareholders to
13:18:22 3 proceed." Did I read that sentence correctly?

13:18:24 4 A. Yes.

13:18:25 5 Q. Did you express an opinion at this
13:18:26 6 meeting?

13:18:27 7 A. I probably did, but I don't know
13:18:28 8 what I expressed, what my opinion was.

13:18:31 9 Q. Okay. Do you have any idea if it
13:18:32 10 was pro independence or pro sale?

13:18:34 11 A. I don't know.

13:18:37 12 Q. Okay. Next sentence, "reflecting
13:18:38 13 on the initial intent of this process, Mr.
13:18:41 14 Hillebrand felt we had our number and moving to
13:18:45 15 the due diligence phase would not prove
13:18:48 16 beneficial." Did I read that correctly?

13:18:51 17 A. Yes.

13:18:51 18 Q. What does it mean in that sentence
13:18:52 19 where it says Mr. Hillebrand felt, quote, we
13:18:56 20 had our number?

13:19:02 21 A. I don't know what it means now.

13:19:09 22 Q. All right. The first part of that
13:19:10 23 sentence refers to "the initial intent of this
13:19:12 24 process." Do you see that?

13:19:14 25 A. The first sentence?

150

13:17:22 1 Q. Do you think that was a good
13:17:23 2 business decision in retrospect?

13:17:25 3 MR. BURKE: Objection. This --
13:17:26 4 I'll object to relevance, Mr. Brautigam. When
13:17:29 5 you had a breach of fiduciary duty claim, you
13:17:33 6 pursued security litigation claims. Now that
13:17:36 7 you have a security claim, you're going after
13:17:40 8 breach of fiduciary duty. Object to relevance.
13:17:42 9 You can answer the question.

13:17:43 10 MR. BRAUTIGAM: Jim, I'm really
13:17:44 11 doing fine without your speaking objections,
13:17:47 12 but what can I tell you.

13:17:48 13 MR. MOORE: Same objection.

13:17:48 14 BY MR. BRAUTIGAM:

13:17:49 15 Q. Can you answer my question?

13:17:50 16 A. What's the question?

13:17:51 17 Q. The question is: Do you believe
13:17:53 18 in retrospect that this was a good business
13:17:56 19 decision?

13:17:58 20 A. Well, until what happened to the
13:17:59 21 stock market it was good, but with the stock
13:18:03 22 market all taking a tumble, it ended up bad in
13:18:11 23 my opinion. That's my opinion.

13:18:14 24 Q. The next sentence is "each
13:18:16 25 director had an opportunity to express his

152

13:19:15 1 Q. The first part of that sentence.

13:19:22 2 A. Reflecting to the -- I do not know
13:19:40 3 what he meant by that.

13:19:44 4 Q. What process is Mr. Hillebrand
13:19:48 5 talking about, as reflected in that sentence?

13:19:50 6 MR. BURKE: Objection. Calls for
13:19:50 7 speculation. Asked and answered.

13:19:52 8 A. I do not know.

13:19:55 9 Q. Was there a process in place on or
13:19:58 10 about June 24th, 1999?

13:20:02 11 A. I do not know.

13:20:07 12 Q. Are you familiar with the phrase
13:20:08 13 due diligence phase?

13:20:18 14 A. No. Not in this instance, no.

13:20:24 15 Q. Mr. Zoellner, these are OHSL Board
13:20:26 16 minutes, correct?

13:20:33 17 MR. BURKE: We've established
13:20:33 18 that, counselor. There's no need to be
13:20:33 19 argumentative with the witness.

13:20:33 20 MR. BRAUTIGAM: I'm not being
13:20:35 21 argumentative.

13:20:35 22 MR. BURKE: We don't need to --

13:20:37 23 MR. BRAUTIGAM: Jim, I'm doing
13:20:38 24 fine.

13:20:39 25 MR. BURKE: No, you're not.

153

13:20:40 1 Please don't be argumentative. That's my
 13:20:42 2 request.
 13:20:42 3 BY MR. BRAUTIGAM:
 13:20:44 4 Q. Mr. Zoellner, these are OHSL Board
 13:20:46 5 minutes --
 13:20:46 6 MR. BURKE: We'll stipulate to
 13:20:47 7 that.
 13:20:49 8 Q. -- is that correct?
 13:20:50 9 MR. BURKE: You don't have to
 13:20:50 10 answer that question.
 13:20:53 11 Q. And Mr. Zoellner, you were an OHSL
 13:20:55 12 Board member at that time, too?
 13:20:57 13 MR. BURKE: We know that, too,
 13:20:58 14 counsel. Asked and answered.
 13:21:01 15 MR. BRAUTIGAM: Jim, it's not time
 13:21:02 16 for your deposition to be taken.
 13:21:04 17 MR. BURKE: You're being
 13:21:06 18 argumentative. Just --
 13:21:06 19 BY MR. BRAUTIGAM:
 13:21:07 20 Q. Mr. Zoellner, my question is: How
 13:21:08 21 could you fulfill your fiduciary duties on the
 13:21:10 22 OHSL Board and not be able to interpret the
 13:21:14 23 Board minutes?
 13:21:15 24 MR. BURKE: Objection. Calls for
 13:21:16 25 speculation. Calls for legal conclusion,

155

13:22:25 1 Q. -- on June 24th, 1999 about the
 13:22:26 2 direction of Oak Hills, correct?
 13:22:28 3 A. Yes.
 13:22:30 4 Q. And as reflected in these minutes,
 13:22:31 5 Mr. Hillebrand says, in substance, let's not
 13:22:35 6 move forward with the due diligence process.
 13:22:39 7 Is that fair?
 13:22:39 8 MR. BURKE: Objection. That's not
 13:22:39 9 what the document says. He said he had no
 13:22:43 10 recollection. Objection to the
 13:22:44 11 mischaracterization of the record. Calls for
 13:22:46 12 speculation. You may answer.
 13:22:47 13 A. I'm not familiar with that. I've
 13:22:49 14 forgotten all about what that is.
 13:22:52 15 Q. Okay. Mr. Zoellner, were you in
 13:22:56 16 favor of moving forward with the due diligence
 13:22:59 17 phase?
 13:23:00 18 A. I do not know that.
 13:23:01 19 Q. Can you figure out --
 13:23:02 20 A. I don't know when -- I don't know
 13:23:03 21 when I -- it should show up in the minutes
 13:23:06 22 someplace where I did vote for -- to move
 13:23:09 23 forward, but until I see that, I do not know.
 13:23:14 24 Q. Move forward with what?
 13:23:16 25 A. With the merger or a sale.

WILLIAMS & OLIVER

513-683-9626

154

13:21:17 1 irrelevant.
 13:21:22 2 A. You know, I just don't recall all
 13:21:24 3 this. That's been years ago and I'm not up on
 13:21:27 4 everything like I should be. And it -- and
 13:21:30 5 it's just a matter of time that I can't recall
 13:21:34 6 all these different things.
 13:21:38 7 Q. Okay. The next sentence is, "this
 13:21:39 8 view was shared by Mr. Hanauer, Herron and
 13:21:44 9 Zoellner as well." Do you see that?
 13:21:53 10 A. Yeah.
 13:21:53 11 Q. And that refers to the previous
 13:21:55 12 sentence, meaning "reflecting on the initial
 13:22:01 13 intent of this process, Mr. Hillebrand felt we
 13:22:05 14 had our number and moving to the due diligence
 13:22:07 15 phase would not prove beneficial."
 13:22:09 16 MR. BURKE: Is that a question?
 13:22:11 17 Q. Yeah, that's a question.
 13:22:15 18 MR. BURKE: Objection to form.
 13:22:16 19 Mischaracterizes the document. You may answer
 13:22:18 20 it.
 13:22:18 21 A. I don't know what they're
 13:22:19 22 referring to there.
 13:22:21 23 Q. Okay. Mr. Zoellner, this is a
 13:22:22 24 serious discussion taking place --
 13:22:24 25 A. Okay.

156

13:23:19 1 Q. Any merger or sale?
 13:23:21 2 A. Well, with -- well, at that point,
 13:23:23 3 yes. We haven't decided on any particular one
 13:23:26 4 at this point.
 13:23:28 5 Q. All right. Was your view on or
 13:23:33 6 about June 24th, 1999, pro sale or pro
 13:23:37 7 independence?
 13:23:38 8 A. I, I do not know that without
 13:23:40 9 looking at the date in the minutes where I
 13:23:44 10 approved the sale.
 13:23:45 11 Q. But Mr. Zoellner, we have the June
 13:23:48 12 24th, 1999 minutes.
 13:23:50 13 A. Yeah.
 13:23:51 14 Q. And isn't a fair reading of this
 13:23:53 15 document that you're against moving forward
 13:23:55 16 with the process?
 13:23:56 17 MR. BURKE: Objection. Asked and
 13:23:57 18 answered. You can go ahead and answer again.
 13:24:03 19 A. At this point I don't know whether
 13:24:04 20 I was for it or against it. I do not know.
 13:24:07 21 Q. Mr. Zoellner, could you read the
 13:24:09 22 sentence that begins, "this view," please, out
 13:24:13 23 loud?
 13:24:13 24 A. "This view was shared by Mr.
 13:24:15 25 Hanauer, Herron and Zoellner as well."

Page 153 to Page 156

157

13:24:19 1 Q. Okay. Let me stop you right
 13:24:21 2 there.
 13:24:22 3 A. Okay.
 13:24:24 4 Q. All right. On or about June 24th,
 13:24:25 5 1999, was Mr. Hanauer in favor of moving
 13:24:28 6 forward with the sale of OHSL?
 13:24:31 7 MR. BURKE: Objection.
 13:24:31 8 Foundation, calls for speculation. You may
 13:24:33 9 answer.
 13:24:33 10 A. I do not know at this point. I
 13:24:37 11 would have to see in here where it says how we
 13:24:41 12 voted. We should have minutes after this where
 13:24:42 13 it shows how we voted, I think, because I don't
 13:24:47 14 know from this.
 13:24:48 15 Q. Mr. Zoellner, we're not there yet.
 13:24:50 16 We're still on June 24th.
 13:24:52 17 A. All right.
 13:24:52 18 Q. And I understand that these
 13:24:54 19 minutes do not reflect a formal vote, but they
 13:24:56 20 do discuss an opportunity to express the
 13:25:00 21 opinion of each director, correct?
 13:25:02 22 A. Yes.
 13:25:04 23 Q. Okay. Was Mr. Hanauer's opinion
 13:25:05 24 on June 24th, 1999, at the regular meeting of
 13:25:10 25 the OHSL directors that you attended, was it in

159

13:26:14 1 A. Yes. At one -- and at one time he
 13:26:17 2 changed, and I don't know when that time was
 13:26:19 3 when he changed.
 13:26:21 4 Q. Mr. Herron?
 13:26:22 5 A. I thought he did.
 13:26:25 6 Q. Okay.
 13:26:25 7 A. I --
 13:26:26 8 Q. Now let's talk about Mr.
 13:26:28 9 Hillebrand. At the June 24th, 1999 regular
 13:26:33 10 meeting of the OHSL directors that you
 13:26:35 11 attended, what was Mr. Hillebrand's position
 13:26:39 12 with respect to a proposed sale or proposed
 13:26:42 13 independence?
 13:26:44 14 A. Well, according to what the
 13:26:45 15 minutes say here, he felt that our number was
 13:26:50 16 up and it was -- that we should be doing
 13:26:53 17 something, that we should move. I think it
 13:26:57 18 said that there.
 13:26:58 19 Q. Could I ask you to read that again
 13:27:00 20 out loud and for the record?
 13:27:03 21 A. Hillebrand felt we had our number
 13:27:06 22 and moving to the due diligence phase would not
 13:27:10 23 prove beneficial.
 13:27:12 24 Q. Is that consistent with the
 13:27:13 25 testimony you gave a minute ago?

158

13:25:14 1 favor of independence, in favor of sale, or
 13:25:17 2 something else?
 13:25:20 3 A. What Ken Hanauer was? I don't
 13:25:23 4 know what Ken Hanauer -- if I understand your
 13:25:26 5 question, I don't know what Ken Hanauer was
 13:25:27 6 thinking.
 13:25:28 7 Q. You don't know what he was
 13:25:29 8 thinking on June 24th, 1999, as reflected at
 13:25:32 9 this meeting?
 13:25:38 10 MR. BURKE: Objection. Asked and
 13:25:38 11 answered.
 13:25:38 12 A. I do not know what he --
 13:25:39 13 Q. Okay. Next question, at the June
 13:25:41 14 24th, 1999 regular meeting of the OHSL Board of
 13:25:46 15 Directors, do you know what Mr. Herron's view
 13:25:49 16 was with respect to pro sale, pro independence,
 13:25:53 17 or something else?
 13:25:58 18 A. I do not know. It's the matter of
 13:26:01 19 a date again. At one time I knew he was, but I
 13:26:04 20 don't know when, whether it was before this,
 13:26:07 21 after it, or what.
 13:26:08 22 Q. Mr. Zoellner, you said you knew he
 13:26:10 23 was what?
 13:26:11 24 A. He was against the sale.
 13:26:13 25 Q. Mr. Herron?

160

13:27:19 1 MR. BURKE: Objection to form.
 13:27:20 2 A. I, I -- what did I agree to
 13:27:23 3 before? I'm sorry.
 13:27:24 4 Q. Read back his --
 13:27:26 5 MR. BURKE: No, no.
 13:27:26 6 Q. -- previous answer.
 13:27:26 7 (Record read by Reporter.)
 13:27:45 8 A. Well, it didn't say that, did it?
 13:27:49 9 Q. No, it didn't.
 13:27:50 10 A. So I was mistaken --
 13:27:52 11 Q. Okay.
 13:27:52 12 A. -- there.
 13:27:52 13 Q. So Mr. Hillebrand was against
 13:27:55 14 moving forward toward a proposed sale, correct?
 13:27:58 15 A. Yes. That's what it says in the
 13:27:59 16 minutes.
 13:28:00 17 Q. And it says Mr. Hanauer agreed
 13:28:01 18 with Mr. Hillebrand, correct?
 13:28:05 19 MR. BURKE: Objection.
 13:28:05 20 A. That's what it says.
 13:28:06 21 Q. Okay. And it says Mr. Herron
 13:28:08 22 agreed with Mr. Hillebrand, correct?
 13:28:10 23 A. Yes.
 13:28:11 24 Q. And it says Mr. Zoellner, that's
 13:28:12 25 you, agreed with that, correct?

161

13:28:14 1 A. Yes, yes.
 13:28:15 2 Q. Now, putting the minutes aside for
 13:28:16 3 a moment, is that consistent with your
 13:28:19 4 recollection that in or about June of 1999,
 13:28:22 5 that's how the Board was divided?
 13:28:24 6 MR. BURKE: Objection.
 13:28:25 7 Q. You have Hillebrand against sale,
 13:28:27 8 Hanauer against sale, Herron against sale, and
 13:28:31 9 Zoellner against sale; is that fair?
 13:28:34 10 MR. BURKE: Objection.
 13:28:35 11 Mischaracterizes the document.
 13:28:37 12 Mischaracterizes prior testimony. Calls for
 13:28:39 13 speculation and foundation.
 13:28:41 14 MR. BRAUTIGAM: We're not talking
 13:28:42 15 about the document anymore.
 13:28:44 16 MR. BURKE: He's already told you
 13:28:45 17 he has no recollection. So unless you're
 13:28:47 18 talking about the document, the question has
 13:28:49 19 been asked and answered. You may answer it.
 13:28:53 20 A. I don't know. I don't remember
 13:28:55 21 Bill Hillebrand being against it.
 13:28:55 22 BY MR. BRAUTIGAM:
 13:28:58 23 Q. Okay. But you do remember Mr.
 13:29:00 24 Hanauer being against it, correct?
 13:29:01 25 A. At one time or another.

163

13:29:57 1 process would continue through the due
 13:29:59 2 diligence phase." Do you see that?
 13:30:01 3 A. The chairman. The last page?
 13:30:05 4 Q. The last sentence of this
 13:30:06 5 paragraph.
 13:30:07 6 A. Oh, up here. What was the
 13:30:15 7 question?
 13:30:17 8 Q. Do you see that sentence, the --
 13:30:19 9 A. Yes, I do. I see the --
 13:30:21 10 Q. Okay. Can you interpret that
 13:30:24 11 sentence for me? What happened that is
 13:30:27 12 reflected in that sentence?
 13:30:28 13 MR. BURKE: Objection to form.
 13:30:29 14 Calls for speculation. Document speaks for
 13:30:31 15 itself.
 13:30:32 16 A. I do not remember.
 13:30:34 17 Q. Okay. Mr. Zoellner, June 24th,
 13:30:37 18 1999, special -- regular meeting of the OHSL
 13:30:42 19 Board, correct?
 13:30:43 20 MR. BURKE: We've established
 13:30:44 21 that, counsel, now on about ten occasions.
 13:30:46 22 Please just ask a question. That's not at
 13:30:48 23 issue. We've said that. Just ask your
 13:30:50 24 question.
 13:30:51 25 MR. BRAUTIGAM: Jim, the witness

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513-683-9626

162

13:29:05 1 Q. Well, wait a second. Wasn't Mr.
 13:29:07 2 Hanauer consistently against any sale of Oak
 13:29:10 3 Hills up to and including June 24th, 1999?
 13:29:13 4 A. I do not know.
 13:29:15 5 Q. Wasn't Mr. Herron consistently
 13:29:17 6 against any sale of Oak Hills up to and
 13:29:20 7 including --
 13:29:21 8 A. I do not know --
 13:29:22 9 Q. Can I finish my question, please?
 13:29:24 10 A. -- because of those dates. Pardon
 13:29:25 11 me.
 13:29:25 12 Q. Up to and including June 24th,
 13:29:27 13 1999?
 13:29:28 14 A. I do not know.
 13:29:30 15 Q. And weren't you against any
 13:29:32 16 proposed sale of OHSL up to and including June
 13:29:36 17 24th, 1999?
 13:29:39 18 MR. BURKE: Objection. Asked and
 13:29:40 19 answered on at least ten occasions.
 13:29:41 20 A. I do not remember.
 13:29:44 21 Q. Okay. What was Mr. Brinker's
 13:29:45 22 position in June of 1999?
 13:29:53 23 A. I do not know.
 13:29:55 24 Q. Okay. The last sentence of that
 13:29:55 25 paragraph says "The chairman indicated the

164

13:30:52 1 seems confused, I'm trying to focus him, okay?
 13:30:55 2 MR. BURKE: Okay.
 13:30:55 3 BY MR. BRAUTIGAM:
 13:30:56 4 Q. Mr. Zoellner, you're at the
 13:30:57 5 meeting, correct? I think the only
 13:30:59 6 interpretation of these minutes is that you
 13:31:06 7 have four directors against moving forward; is
 13:31:06 8 that fair?
 13:31:06 9 MR. BURKE: Move to strike.
 13:31:08 10 MR. MOORE: Object to that
 13:31:08 11 characterization.
 13:31:08 12 MR. BURKE: You have no right to
 13:31:09 13 characterize the document. You can ask him for
 13:31:10 14 his best recollection. He's given you his best
 13:31:13 15 recollection on numerous occasions, Michael,
 13:31:14 16 and I think you're badgering the witness. Go
 13:31:17 17 ahead. Can you ask the question?
 13:31:19 18 MR. BRAUTIGAM: I've already asked
 13:31:19 19 it.
 13:31:21 20 MR. BURKE: And I objected to it.
 13:31:22 21 MR. BRAUTIGAM: Fine. Jim, we
 13:31:22 22 don't need speaking objections. Just object.
 13:31:22 23 MR. BURKE: I will state my
 13:31:25 24 objections as I think I should.
 13:31:25 25 MR. BRAUTIGAM: Do what you have

Page 161 to Page 164

165

13:31:26 1 to do. Can we have the question read back,
 13:31:28 2 please?
 13:31:28 3 (Record read by Reporter.)
 13:31:43 4 MR. BURKE: Objection.
 13:31:44 5 MR. MOORE: Objection to
 13:31:44 6 characterization.
 13:31:45 7 MR. BURKE: Mischaracterizes the
 13:31:46 8 document. Mischaracterizes prior testimony.
 13:31:48 9 You may answer.
 13:31:56 10 A. That said there were four against
 13:31:58 11 it? I do not remember that.
 13:32:12 12 Q. Okay. Do you remember Mr. Brinker
 13:32:14 13 saying we're going to move forward anyway?
 13:32:16 14 A. No, I don't.
 13:32:18 15 Q. Is that reflected in these
 13:32:19 16 minutes?
 13:32:20 17 MR. BURKE: Objection.
 13:32:22 18 A. I don't know.
 13:32:24 19 Q. Okay. What does the sentence mean
 13:32:25 20 to you, "The chairman indicated the process
 13:32:27 21 would continue through the due diligence
 13:32:29 22 phase"?
 13:32:45 23 A. I really don't know what that
 13:32:47 24 means.
 13:32:49 25 Q. What happened after this meeting?

167

13:35:09 1 called?
 13:35:09 2 A. This was called to get more
 13:35:10 3 information on the -- whether we should sell.
 13:35:16 4 Q. Sell to anyone or sell to
 13:35:17 5 Provident?
 13:35:34 6 A. Oh, according to the minutes there
 13:35:36 7 it was Provident.
 13:35:40 8 Q. Okay. And what information did
 13:35:45 9 you need to make this determination? We've
 13:35:48 10 talked about getting more information. What
 13:35:50 11 information did you need?
 13:35:51 12 MR. BURKE: Objection to form.
 13:35:53 13 A. I think the minutes, they
 13:35:56 14 discussed the offer. And also the employees,
 13:36:04 15 the benefits of the employees. I think it said
 13:36:07 16 that in the minutes after I read it.
 13:36:10 17 Q. Okay. Where does it say that in
 13:36:11 18 the minutes?
 13:36:29 19 A. It says here in the second to the
 13:36:31 20 last paragraph, Mr. Roe pointed out that a
 13:36:35 21 decision needed to be reached on the employment
 13:36:39 22 agreements for management.
 13:36:41 23 Q. Okay. Does that refer to all of
 13:36:43 24 the employees?
 13:36:46 25 A. Well, when I read it the first

166

13:32:52 1 MR. BURKE: Objection to form,
 13:32:53 2 vague.
 13:32:54 3 A. I do not know.
 13:32:57 4 Q. Do you know what your position was
 13:33:00 5 on or about June 24th, 1999?
 13:33:03 6 MR. BURKE: Objection. Asked and
 13:33:04 7 answered.
 13:33:05 8 A. I do not know.
 13:33:15 9 Q. Please take a look at Zoellner
 13:33:18 10 Deposition Exhibit 17. Okay. Mr. Zoellner,
 13:33:57 11 have you seen these minutes before?
 13:33:58 12 A. Yes.
 13:33:59 13 Q. And do they reflect the special
 13:34:00 14 meeting of the OHSL Financial Corporation Board
 13:34:04 15 of Directors on July 22nd, 1999?
 13:34:06 16 A. Yeah, as much as I've read of it.
 13:34:08 17 Q. And did you attend this meeting?
 13:34:10 18 MR. BURKE: Read through the rest
 13:34:11 19 of it, Howard. He'll be asking you questions
 13:34:14 20 so you might as well read the document first.
 13:35:04 21 A. Okay.
 13:35:04 22 Q. Now, this reflects a special
 13:35:06 23 meeting, correct?
 13:35:07 24 A. Yes.
 13:35:07 25 Q. And why was this special meeting

168

13:36:48 1 time I thought so, but now when I read it this
 13:36:50 2 time, it talks about management, so it probably
 13:36:55 3 wasn't -- the point was for management, I
 13:36:59 4 guess, at that time.
 13:37:00 5 Q. And who was management at that
 13:37:01 6 time?
 13:37:02 7 A. Ken Hanauer and the CFO. It's
 13:37:26 8 terrible, I can't think of the guy's name. I,
 13:37:36 9 I called it the management team, which is Ken
 13:37:39 10 Hanauer and -- oh, it had -- their names were
 13:37:43 11 someplace else there. I can't recall all their
 13:37:47 12 names.
 13:37:47 13 Q. Okay. Mr. Zoellner --
 13:37:49 14 A. I can't think of their names now.
 13:37:51 15 Q. Did McDonald Investments prepare a
 13:37:56 16 book for the Board to review?
 13:38:06 17 A. I do not remember whether it was
 13:38:07 18 before that meeting, for that meeting, or after
 13:38:11 19 that meeting, but they did prepare a book.
 13:38:13 20 Q. And did you receive that book?
 13:38:15 21 A. Yes.
 13:38:15 22 Q. And where is that book now?
 13:38:16 23 A. In shreds.
 13:38:17 24 Q. Okay. Do you remember anything of
 13:38:20 25 substance about that presentation?

169

13:38:21 1 A. No, I don't.
 13:38:28 2 Q. Okay. Do you see the fourth
 13:38:30 3 paragraph beginning "The Board concluded that
 13:38:33 4 the offer from Provident Financial was the best
 13:38:35 5 alternative for enhancing the value of OHSL
 13:38:39 6 stock." Do you see that?
 13:38:41 7 A. Yeah.
 13:38:41 8 Q. And my question is, alternative to
 13:38:43 9 what?
 13:39:13 10 A. The way I read that, the best way
 13:39:16 11 they could enhance the value of OHSL's stock is
 13:39:19 12 by merging with Provident.
 13:39:21 13 Q. And did you believe that on July
 13:39:22 14 22nd, 1999?
 13:39:25 15 A. I would probably think so.
 13:39:26 16 Q. And did you believe that before
 13:39:27 17 July 22nd, 1999?
 13:39:38 18 A. I don't remember.
 13:39:38 19 Q. Okay. Mr. Zoellner, you've talked
 13:39:40 20 about how you changed your vote, correct?
 13:39:41 21 A. Yes.
 13:39:42 22 Q. And I believe this is the day,
 13:39:43 23 July 22nd.
 13:39:45 24 A. I do not know what day I changed.
 13:39:47 25 Q. Okay. Do you know why you changed

13:39:49 1 your vote?
 13:39:49 2 A. Because it was in the best
 13:39:52 3 interest of the stockholders.
 13:39:53 4 Q. Okay. And was that based on
 13:39:55 5 objective or subjective factors or some
 13:39:58 6 combination?
 13:39:59 7 A. Well, the best financially for the
 13:40:01 8 stock.
 13:40:02 9 Q. Okay. What went into your
 13:40:04 10 analysis to come to that conclusion?
 13:40:05 11 A. Gee, I don't know. I don't know
 13:40:08 12 what I thought at that time.
 13:40:11 13 Q. Do you remember when you changed
 13:40:13 14 for the first time?
 13:40:15 15 MR. BURKE: Objection. Asked and
 13:40:15 16 answered.
 13:40:16 17 A. No, I don't remember.
 13:40:18 18 Q. Is it possible that you just gave
 13:40:20 19 up, you were sick of fighting?
 13:40:26 20 A. No, no.
 13:40:26 21 Q. You know, that's what Ken Hanauer
 13:40:26 22 testified to.
 13:40:26 23 MR. BURKE: That's an absolute
 13:40:28 24 mischaracterization of the record and you don't
 13:40:28 25 have to accept that.

171

13:40:29 1 MR. BRAUTIGAM: Actually I'll show
 13:40:30 2 him it later.
 13:40:31 3 MR. BURKE: Well, if you want to
 13:40:32 4 show him something, that's fine. Mr. Zoellner
 13:40:34 5 can answer your questions, but not your
 13:40:36 6 characterizations of the testimony. Don't
 13:40:38 7 answer that question, Howard.
 13:40:39 8 MR. BRAUTIGAM: Can I have it read
 13:40:40 9 back, please?
 13:40:40 10 (Record read by Reporter.)
 13:40:54 11 MR. BURKE: What is what Ken
 13:40:54 12 Hanauer testified to?
 13:40:56 13 MR. BRAUTIGAM: That he just gave
 13:40:56 14 us.
 13:40:57 15 MR. BURKE: That Mr. Zoellner --
 13:40:58 16 MR. BRAUTIGAM: No, that Mr.
 13:40:59 17 Hanauer gave us.
 13:41:00 18 MR. BURKE: The question was
 13:41:00 19 misleading.
 13:41:02 20 MR. BRAUTIGAM: I didn't mean to
 13:41:02 21 mislead.
 13:41:03 22 MR. BURKE: Go ahead and answer
 13:41:04 23 the question.
 13:41:05 24 MR. BRAUTIGAM: Jim, it was a very
 13:41:06 25 good objection.

172

13:41:07 1 A. No, I didn't give up and I didn't
 13:41:10 2 think Ken gave up, either, but that's all
 13:41:13 3 right. That has nothing to do with me, what
 13:41:14 4 Ken thought, I guess.
 13:41:14 5 BY MR. BRAUTIGAM:
 13:41:30 6 Q. Okay. We'll just hold this for
 13:41:32 7 now. So on July 22nd, 1999, you felt that the
 13:41:38 8 Provident transaction represented the best way
 13:41:43 9 to maximize OHSL shareholder value; is that
 13:41:46 10 correct?
 13:41:46 11 A. That is correct.
 13:41:47 12 Q. And that was a change from your
 13:41:48 13 previous thinking, but you don't know when that
 13:41:51 14 change took place?
 13:41:51 15 A. I do not know when that changed.
 13:41:54 16 Q. And aside from what you've
 13:41:55 17 previously testified to, you can't articulate
 13:41:58 18 the reasons?
 13:41:59 19 A. Do what?
 13:42:00 20 Q. You can't articulate the reasons
 13:42:02 21 for this change?
 13:42:03 22 MR. BURKE: Objection. Asked and
 13:42:04 23 answered.
 13:42:05 24 A. I don't know what the reasons
 13:42:05 25 were, no, not at this time.

173

13:42:08 1 Q. Now, did it surprise you that Mr.
 13:42:10 2 Herron voted against the continued negotiations
 13:42:14 3 at this meeting?
 13:42:19 4 A. I don't know. I don't know.
 13:42:21 5 Q. Did it surprise you that Mr.
 13:42:23 6 Hanauer abstained?
 13:42:26 7 A. I didn't know he abstained.
 13:42:29 8 Q. You didn't know he abstained?
 13:42:30 9 A. But it's in the letter that he
 13:42:31 10 did -- Hanauer abstained from the vote, so I --
 13:42:38 11 nothing surprised me really. Everybody is
 13:42:41 12 entitled to their opinion.
 13:42:46 13 Q. Did it surprise you that Mr.
 13:42:48 14 Herron resigned five days later, effective July
 13:42:51 15 30th?
 13:42:52 16 MR. BURKE: Objection.
 13:42:52 17 A. Well, that -- I wouldn't
 13:42:54 18 necessarily -- it's all according to the
 13:43:05 19 definition of surprise. I guess I'd say I was
 13:43:13 20 surprised that Ken did.
 13:43:16 21 MR. BURKE: That what?
 13:43:17 22 A. Surprised that, that Ken -- what
 13:43:24 23 was the question?
 13:43:25 24 Q. We were talking about Mr. Herron's
 13:43:26 25 resignation.

175

13:47:37 1 Q. -- between OHSL and Provident?
 13:47:41 2 MR. BURKE: You'd better reread
 13:47:41 3 it. That was an incomplete question.
 13:47:44 4 Q. Okay.
 13:47:44 5 MR. BURKE: Let's start again.
 13:47:48 6 Q. Did you ever learn that Mr. Herron
 13:47:50 7 had resigned at least in part because of his
 13:47:53 8 disagreement with the direction that the
 13:47:55 9 company was going in with respect to the merger
 13:47:57 10 with Provident?
 13:48:01 11 A. No.
 13:48:07 12 Q. Okay. Would you turn to -- this
 13:49:26 13 is from Tom Herron's deposition, and he's --
 13:49:30 14 it's on page 33. He's talking about the phone
 13:49:35 15 call he made on or about July 27th, 1999 to the
 13:49:39 16 directors. And this is what he has to say to
 13:49:39 17 you --
 13:49:44 18 MR. BURKE: Let me have that
 13:49:45 19 volume one. Let me see where you're starting.
 13:49:54 20 I'll stand behind you if that's okay.
 13:49:56 21 Q. That's fine. And I asked Mr.
 13:49:58 22 Herron: Were you able to reach Howard Zoellner
 13:50:00 23 that night?
 13:50:01 24 Answer: Yes, I was.
 13:50:03 25 Question -- I'm asking Mr. Herron:

174

13:43:28 1 A. But Ken was in there, too?
 13:43:30 2 MR. BURKE: No, they're separate
 13:43:31 3 questions. Let's start again.
 13:43:33 4 A. Okay.
 13:43:34 5 Q. Okay.
 13:43:34 6 MR. BURKE: Let's take five
 13:43:35 7 minutes.
 13:43:35 8 (Brief recess.)
 13:46:54 9 (Record read by Reporter.)
 13:46:54 10 Q. Okay. New question. Were you
 13:46:56 11 surprised that Mr. Herron resigned on July
 13:46:59 12 27th, 1999, effective July 30th?
 13:47:02 13 A. Yes, I was surprised with Ken --
 13:47:04 14 or Tom.
 13:47:06 15 Q. And why were you surprised?
 13:47:07 16 A. Because he was active and a good
 13:47:10 17 man. I liked him and -- a friend of yours that
 13:47:14 18 decides that he's going to, well, for business
 13:47:19 19 reasons -- well, I'll -- that he said he left.
 13:47:28 20 Q. Did you ever learn that Mr. Herron
 13:47:29 21 was resigning at least in part in protest of
 13:47:32 22 the merger between --
 13:47:33 23 A. No, I never knew that.
 13:47:35 24 Q. Can I finish my question, please?
 13:47:36 25 A. Oh, okay.

176

13:50:04 1 What did you say to Howard and what did he say
 13:50:07 2 to you?
 13:50:07 3 Answer: Same thing. It was the
 13:50:11 4 same basic content as the other phone calls.
 13:50:13 5 And Howard was probably the most affected by
 13:50:17 6 it. And he expressed that he was sorry that I
 13:50:20 7 was doing this, but understood. And also used
 13:50:22 8 the word honorable.
 13:50:24 9 Question: Was there anything
 13:50:26 10 extra in the phone conversation between you and
 13:50:28 11 Mr. Zoellner, because previously, at least for
 13:50:32 12 a time, you and Mr. Zoellner had been on the
 13:50:34 13 same side, opposing the transaction.
 13:50:37 14 And Mr. Burke says objection to
 13:50:39 15 the form.
 13:50:39 16 And Mr. Herron answers: He, as he
 13:50:42 17 did before meetings, expressed his disbelief we
 13:50:45 18 had gotten this far.
 13:50:46 19 Question: Do you remember what
 13:50:53 20 words he used?
 13:50:53 21 Answer: I can't believe that
 13:50:53 22 we've gotten this far.
 13:50:54 23 And what, if anything, did you say
 13:50:57 24 in response?
 13:50:57 25 Answer: Sorry, Howard, that's

177

178

13:51:00 1 something the majority of the Board apparently
 13:51:02 2 wants.
 13:51:03 3 Does that refresh your
 13:51:05 4 recollection with respect to your conversation
 13:51:07 5 with Mr. Herron?
 13:51:08 6 A. Some of it.
 13:51:13 7 Q. Okay. Do you remember using the
 13:51:14 8 word "honorable" now?
 13:51:15 9 A. No, I don't remember using that.
 13:51:17 10 Q. Do you remember questioning how we
 13:51:20 11 had gotten that far?
 13:51:21 12 A. No. I don't remember that,
 13:51:22 13 either.
 13:51:23 14 Q. Okay. How was your recollection
 13:51:24 15 refreshed by my reading that?
 13:51:26 16 A. Well, that he had called me and
 13:51:31 17 that I said that he shouldn't leave, he should
 13:51:34 18 stay with us, we'd like it if he would, you're
 13:51:38 19 a good man and all of those good things. And
 13:51:41 20 that was about the extent of it, that I was
 13:51:43 21 sorry to see him make that decision.
 13:51:46 22 Q. But you understood that he was
 13:51:47 23 making the decision at least in part --
 13:51:49 24 A. No, I don't know what he was
 13:51:51 25 making it in part.

13:51:54 1 Q. Excuse me, can I finish my
 13:51:55 2 question?
 13:51:55 3 A. I'm sorry. I've got to take it
 13:51:57 4 easy.
 13:51:58 5 MR. BURKE: You have answered it
 13:51:58 6 several times, Howard, so don't worry about it.
 13:52:02 7 A. I have to hold off here.
 13:52:03 8 Q. -- at least in part because he
 13:52:04 9 disagreed with the merger?
 13:52:06 10 MR. BURKE: Objection. Asked and
 13:52:07 11 answered. Mischaracterizes prior testimony.
 13:52:09 12 You may answer.
 13:52:09 13 A. I don't know.
 13:52:10 14 Q. He didn't tell you that?
 13:52:11 15 A. I don't know. I don't recollect
 13:52:12 16 that.
 13:52:15 17 Q. Well, you knew he was against the
 13:52:17 18 transaction, correct?
 13:52:18 19 MR. BURKE: Objection. Asked and
 13:52:21 20 answered.
 13:52:21 21 A. No. All the phone call was was
 13:52:26 22 that he was leaving, he wasn't going to run for
 13:52:29 23 the Board.
 13:52:30 24 Q. Excuse me, what do you mean, "run
 13:52:31 25 for the Board"?

179

180

13:52:32 1 A. That he wasn't -- well, he was up
 13:52:34 2 to run for the Board.
 13:52:36 3 Q. Actually he wasn't.
 13:52:37 4 MR. BURKE: Wait. Please let the
 13:52:39 5 witness finish.
 13:52:40 6 Q. Okay, fine.
 13:52:44 7 MR. BURKE: You know, every time
 13:52:46 8 that happens, we sort of lose our track, so I
 13:52:49 9 don't know what the question is right now.
 13:52:49 10 (Record read by Reporter.)
 13:53:19 11 BY MR. BRAUTIGAM:
 13:53:19 12 Q. Mr. Zoellner, please look at
 13:53:21 13 Zoellner Deposition Exhibit 17. And if you
 13:53:24 14 look at the fourth paragraph, it says Mr.
 13:53:27 15 Herron voted against the motion, correct?
 13:53:36 16 A. One, two, three, four. All right,
 13:53:51 17 I've got it.
 13:53:52 18 Q. And the motions mean --
 13:53:54 19 MR. BURKE: Wait, wait.
 13:53:55 20 A. Motion carried with Mr. Herron
 13:53:57 21 voting against the motion and Mr. Hanauer
 13:54:01 22 abstaining from the vote.
 13:54:03 23 Q. And the motion was to continue
 13:54:05 24 negotiations with Provident, correct?
 13:54:08 25 MR. BURKE: Objection. Document

13:54:09 1 speaks for itself. You may answer.
 13:54:11 2 A. Yes, that's what it says.
 13:54:16 3 Q. And Mr. Herron was against moving
 13:54:19 4 forward with continued negotiations, correct?
 13:54:22 5 MR. BURKE: Objection. Document
 13:54:23 6 speaks for itself.
 13:54:29 7 A. What was that question again? I'm
 13:54:30 8 sorry, my train of thought is --
 13:54:34 9 Q. Mr. Herron was against continued
 13:54:35 10 negotiations with Provident, correct?
 13:54:38 11 A. It says in the minutes that he
 13:54:39 12 voted against the motion, so I guess that's
 13:54:41 13 true.
 13:54:41 14 Q. And then five days later he
 13:54:44 15 resigned, correct?
 13:54:45 16 A. I don't know about five days, but
 13:54:46 17 he did resign.
 13:54:47 18 Q. Well, let's do the math. This is
 13:54:50 19 July 22nd.
 13:54:51 20 A. Um-hmm.
 13:54:52 21 Q. That's the day Mr. Herron voted
 13:54:54 22 against continued negotiations, correct?
 13:54:56 23 A. Yes.
 13:54:57 24 Q. And this is July 27th?
 13:55:00 25 A. 27th, so it's five days later,

13:55:02 1 yes.

13:55:06 2 Q. And it was no secret that Mr.
13:55:08 3 Herron was opposed to this proposed sale of
13:55:12 4 OHSL all along, correct?

13:55:16 5 MR. BURKE: Objection.
13:55:18 6 Argumentative, mischaracterizes prior
13:55:18 7 testimony. Asked and answered.

13:55:19 8 A. Yes, I knew.

13:55:21 9 Q. And even though you wanted Mr.
13:55:24 10 Herron to stay on the Board because he was a
13:55:26 11 good guy, you understood that it was a
13:55:30 12 principled decision that he was making in
13:55:32 13 resigning, correct?

13:55:34 14 MR. BURKE: Objection. I don't
13:55:35 15 know what you mean by "a principled decision."
13:55:39 16 You may answer.

13:55:40 17 A. From what I remember, his
13:55:42 18 resigning was due to business, that he would
13:55:45 19 have to be going to Brazil more, that he
13:55:51 20 wouldn't be able to put the time in. That's
13:55:53 21 the reason that sticks with me.

13:55:57 22 Q. Actually his testimony is directly
13:55:59 23 contrary to that.

13:56:00 24 MR. BURKE: Objection. Wait a
13:56:00 25 minute.

13:56:03 1 A. No.

13:56:03 2 MR. BURKE: You don't have to
13:56:03 3 answer with respect to his characterization of
13:56:06 4 testimony.

13:56:13 5 Q. Okay. Page 61 of Mr. Herron's
13:56:18 6 deposition. Let's mark this as the next
13:56:23 7 exhibit, please. This will be marked as
13:56:23 8 Zoellner Deposition Exhibit 24.

13:56:47 9 Let me direct your attention to
13:56:48 10 page 61 up here. This is Mr. Herron's
13:56:51 11 deposition testimony. And we started Mr.
13:56:53 12 Herron on the day of the World Trade Center
13:56:57 13 event and then we stopped and continued ten
13:56:59 14 days later, so this is volume two.

13:57:01 15 Now, during that time Mr. Herron
13:57:04 16 reflected on his testimony and he made some
13:57:06 17 corrections and this is one of the corrections.

13:57:08 18 And I asked the question: Okay,
13:57:12 19 please continue.

13:57:16 20 And Mr. Herron's answer is:
13:57:19 21 Fairness on the grounds of completeness and
13:57:23 22 accuracy. Regarding page 30, line -- the
13:57:30 23 answer beginning with line eight, the question
13:57:30 24 was had I resigned in part in protest. Being
13:57:32 25 from the 1960s, my immediate image of protest

13:57:34 1 is something a little more violent than what I
13:57:37 2 was involved with here. Protest, of course, is
13:57:39 3 just an expression of disapproval. And in that
13:57:43 4 sense, I certainly resign in protest.

13:57:46 5 Do you see that?

13:57:47 6 A. Yeah, I see that.

13:57:48 7 Q. And is this the first time that
13:57:50 8 you learned that Mr. Herron resigned in part in
13:57:54 9 protest of the decision to go forward with the
13:57:56 10 merger with Provident?

13:57:58 11 MR. BURKE: Objection. Counsel,
13:57:59 12 you've shown him a document that he's never
13:58:01 13 seen before. It's a deposition that he cannot
13:58:03 14 place in context, and then you just at the end
13:58:06 15 mischaracterized the testimony. It doesn't say
13:58:09 16 anything about in protest of anything. I think
13:58:11 17 that's a misleading question and I object to
13:58:13 18 form.

13:58:14 19 MR. BRAUTIGAM: Jim, I did the
13:58:15 20 best I could.

13:58:16 21 MR. BURKE: It calls for
13:58:16 22 speculation.

13:58:16 23 MR. BRAUTIGAM: We don't need
13:58:18 24 speaking objections.

13:58:19 25 MR. BURKE: It doesn't say what

13:58:20 1 you just said it says. That's my objection.

13:58:24 2 MR. BRAUTIGAM: Okay.

13:58:24 3 MR. BURKE: You can answer, Mr.
13:58:24 4 Zoellner, if you understand the question.

13:58:26 5 THE WITNESS: What's the question?
13:58:26 6 BY MR. BRAUTIGAM:

13:58:27 7 Q. Is this the first you learned that
13:58:28 8 Mr. Herron resigned at least in part in
13:58:31 9 protest?

13:58:33 10 MR. BURKE: Objection. Calls for
13:58:35 11 speculation. You may answer.

13:58:40 12 A. No, I knew he was against it, but
13:58:43 13 I didn't realize he was in protest of it. What
13:58:49 14 stuck with me was that he was going to take on
13:58:52 15 more responsibility with his job, which is in
13:58:56 16 South America. He wasn't completely in favor
13:59:00 17 of doing anything, but I don't know about
13:59:03 18 protest.

13:59:04 19 Q. He wasn't -- you said he wasn't
13:59:07 20 completely in favor of doing anything. In
13:59:08 21 fact, he was completely against a merger with
13:59:10 22 Provident, correct?

13:59:12 23 MR. BURKE: Objection.
13:59:13 24 Mischaracterizes the prior testimony. You may
13:59:15 25 answer.

185

13:59:15 1 A. I can't say that he was completely
 13:59:17 2 against it, no.
 13:59:18 3 Q. Okay. Let's take the July 22nd,
 13:59:21 4 1999 minutes. Mr. Herron voted against
 13:59:25 5 continued negotiations, correct?
 13:59:27 6 MR. BURKE: We've already
 13:59:27 7 established that, counsel, on about a dozen
 13:59:30 8 occasions. What's the question?
 13:59:33 9 Q. Correct?
 13:59:34 10 MR. BURKE: The document speaks
 13:59:34 11 for itself, counsel. It says that.
 13:59:37 12 MR. BRAUTIGAM: Jim, I'm really
 13:59:38 13 doing okay, I don't need your speaking
 13:59:39 14 objections. We're doing fine. A little bit --
 13:59:44 15 MR. BURKE: Mike, my objection is
 13:59:45 16 that --
 13:59:46 17 MR. BRAUTIGAM: Jim, I don't need
 13:59:46 18 your help.
 13:59:47 19 MR. BURKE: We don't need to ask
 13:59:48 20 the same question over and over again. It's
 13:59:51 21 prolonging the deposition unnecessarily.
 13:59:54 22 MR. BRAUTIGAM: Jim, I've got my
 13:59:55 23 seven hours and I'm going to make use of it.
 13:59:55 24 BY MR. BRAUTIGAM:
 13:59:57 25 Q. Mr. Zoellner, there's a question

187

14:01:04 1 A. Yes, we --
 14:01:05 2 MR. BURKE: No, no, listen to the
 14:01:07 3 question.
 14:01:27 4 Q. Mr. Zoellner, the June 24th, 1999
 14:01:30 5 minutes reflect that although no formal vote
 14:01:32 6 was taken, when the directors were asked to
 14:01:34 7 express their opinion, Mr. Herron was against
 14:01:38 8 the sale of Oak Hills?
 14:01:39 9 MR. BURKE: Objection.
 14:01:40 10 Mischaracterizes the document. You may answer.
 14:01:46 11 A. Yes, the minutes say so here.
 14:01:48 12 Q. Okay. Was there ever a time that
 14:01:50 13 Mr. Herron was in favor of the sale of Oak
 14:01:53 14 Hills?
 14:01:54 15 A. I do not know that.
 14:02:01 16 Q. Okay. Let's take a look at the
 14:02:02 17 next exhibit, Zoellner 18. Okay. These are
 14:02:10 18 the July 23rd, 1999 minutes of the regular
 14:02:13 19 meeting of OHSL Financial Corporation, correct?
 14:03:19 20 Is that correct?
 14:03:19 21 A. Yes.
 14:03:20 22 Q. Okay.
 14:03:20 23 A. I was there at the meeting.
 14:03:23 24 Q. Okay. Was there any discussion
 14:03:24 25 about the previous day's vote at this meeting?

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186

14:00:00 1 pending. The minutes for July 22nd, 1999
 14:00:03 2 showed Mr. Herron was against the transaction.
 14:00:06 3 MR. BURKE: Objection.
 14:00:06 4 MR. MOORE: Objection.
 14:00:07 5 MR. BURKE: Mischaracterizes prior
 14:00:09 6 testimony. That's not what he said. You may
 14:00:12 7 answer.
 14:00:13 8 A. According to these minutes he did
 14:00:14 9 vote against it. That's all I know.
 14:00:16 10 Q. And the minutes of June 24th,
 14:00:19 11 1999, although it doesn't reflect a formal
 14:00:21 12 vote, also show that Mr. Herron was against the
 14:00:24 13 transaction, correct?
 14:00:26 14 MR. BURKE: Objection.
 14:00:28 15 Mischaracterizes the document.
 14:00:29 16 Q. Correct?
 14:00:29 17 A. If the minutes say so, yes.
 14:00:31 18 Q. Well, take a look at it. It's
 14:00:32 19 Zoellner 16 and it's on the second page, first
 14:00:37 20 full paragraph.
 14:00:41 21 A. Which paragraph?
 14:00:42 22 Q. Second page, top paragraph.
 14:00:44 23 A. Oh, second page.
 14:00:51 24 MR. BURKE: And then the read the
 14:00:54 25 question back after he reads it, please.

188

14:03:31 1 A. I don't remember.
 14:03:33 2 Q. Do you see in the third paragraph
 14:03:34 3 it says MUC?
 14:03:37 4 A. One, two, three -- motion
 14:03:40 5 unanimously carried. The minutes of the 24th
 14:03:47 6 special meeting of the Board of Directors
 14:03:48 7 were -- upon a motion -- let's see, one, two,
 14:03:56 8 three, four, five, six, seven, eight -- yeah,
 14:03:59 9 they were all there, so that --
 14:04:02 10 MR. BURKE: Howard, wait for a
 14:04:03 11 question.
 14:04:04 12 A. Okay.
 14:04:05 13 Q. The question was, do you see where
 14:04:06 14 it says MUC?
 14:04:07 15 A. Yes.
 14:04:07 16 Q. And you said that means motion
 14:04:09 17 unanimously carried, correct?
 14:04:15 18 A. Yes.
 14:04:15 19 Q. And that means that there were
 14:04:15 20 eight directors there and eight directors voted
 14:04:15 21 in favor of that, correct?
 14:04:15 22 A. Um-hmm.
 14:04:17 23 MR. BURKE: Objection. Calls for
 14:04:17 24 speculation. You may answer.
 14:04:19 25 A. That -- the minutes say that the

Page 185 to Page 188

189

14:04:22 1 minutes of the 24th were approved unanimously.
 14:04:26 2 That is true.
 14:04:28 3 Q. Okay. And unanimously means
 14:04:31 4 that --
 14:04:32 5 A. All eight of them approved the
 14:04:34 6 minutes.
 14:04:35 7 Q. Right, okay.
 14:04:36 8 A. Yeah.
 14:04:36 9 Q. Because if all eight of them did
 14:04:38 10 not approve the minutes, it wouldn't be
 14:04:40 11 unanimous?
 14:04:40 12 A. That's true.
 14:04:41 13 MR. BURKE: Objection.
 14:04:43 14 Q. That's true? What was your
 14:04:44 15 answer, Mr. Zoellner?
 14:04:45 16 A. That's true.
 14:04:47 17 Q. Okay. Do you remember anything
 14:04:48 18 about the July 23rd, 1999 regular meeting,
 14:04:53 19 independent of the document?
 14:04:57 20 A. Oh, this is refreshing my memory
 14:05:03 21 about the discussion taking place on senior
 14:05:05 22 management, which I was referring to before.
 14:05:09 23 Q. Okay. And what was that
 14:05:11 24 discussion?
 14:05:13 25 A. What I was referring to, the --

191

14:06:21 1 MR. BURKE: Objection. Calls for
 14:06:22 2 speculation.
 14:06:25 3 A. I don't follow that at all.
 14:06:28 4 Q. Well, when you have a contract
 14:06:30 5 between OHSL and Ken Hanauer, let's say, OHSL
 14:06:33 6 would have to sign, correct?
 14:06:35 7 MR. BURKE: Objection to
 14:06:35 8 relevance, foundation.
 14:06:42 9 A. To be unanimous, yes.
 14:06:44 10 MR. BURKE: Wait, wait, wait.
 14:06:45 11 MR. BRAUTIGAM: Jim, you're
 14:06:47 12 interrupting the witness. Please let him
 14:06:48 13 finish.
 14:06:49 14 MR. BURKE: Do you understand the
 14:06:50 15 question, Mr. Zoellner?
 14:06:51 16 A. No, maybe I don't.
 14:06:54 17 MR. BURKE: There's nothing about
 14:06:54 18 unanimous.
 14:06:56 19 MR. BRAUTIGAM: Jim, please.
 14:06:57 20 MR. BURKE: I mean, counsel, did
 14:06:58 21 your question -- I mean, I'm just trying to
 14:07:00 22 keep this thing on track. I apologize.
 14:07:03 23 MR. BRAUTIGAM: Jim, no apology is
 14:07:04 24 necessary, but no coaching is necessary,
 14:07:06 25 either.

WILLIAMS & OLIVER

513-683-9626

190

14:05:15 1 they were talking to Provident about the --
 14:05:19 2 what senior management would get as far as the
 14:05:21 3 salary or that if they stayed or left or that.
 14:05:25 4 Q. And this is July of 1999, correct?
 14:05:28 5 A. This is July 23rd, '99, yes.
 14:05:31 6 Q. So these change of control
 14:05:33 7 contracts between OHSL and senior management
 14:05:36 8 were not entered into in June of 1999, correct?
 14:05:43 9 MR. BURKE: Objection. Calls for
 14:05:43 10 speculation. You may answer.
 14:05:48 11 A. Well, the minutes show that the
 14:05:50 12 motion by Tenoever, seconded by Herron, the
 14:05:52 13 chairman was authorized to execute the
 14:05:55 14 contracts. That's all I know.
 14:05:56 15 Q. So that means they're not
 14:05:57 16 finalized, correct?
 14:05:59 17 MR. BURKE: Objection. Calls for
 14:06:00 18 speculation. You may answer.
 14:06:02 19 A. Well, I don't know that --
 14:06:03 20 executed means to do it, doesn't it? Execute
 14:06:08 21 the contract?
 14:06:09 22 Q. Well, when you execute a contract,
 14:06:12 23 how many parties -- well, when you -- with
 14:06:15 24 respect to executing a contract, OHSL had to
 14:06:19 25 sign off on the contract, correct?

192

14:07:06 1 BY MR. BRAUTIGAM:
 14:07:06 2 Q. Mr. Zoellner, if you have a
 14:07:07 3 contract between OHSL and Ken Hanauer, is it
 14:07:10 4 fair to say that a representative of OHSL would
 14:07:13 5 have to sign the contract?
 14:07:14 6 MR. BURKE: Objection to
 14:07:14 7 relevance. Calls for speculation. You may
 14:07:17 8 answer.
 14:07:17 9 MR. MOORE: Objection.
 14:07:30 10 A. You're asking me who signed the
 14:07:32 11 contract? Executed this contract?
 14:07:35 12 Q. No, my question is a little
 14:07:37 13 different. If you had a contract between OHSL
 14:07:40 14 and Ken Hanauer and that contract called for a
 14:07:43 15 payment to Ken Hanauer in case there was a
 14:07:46 16 change in control, is it fair to say that
 14:07:49 17 someone from OHSL would have to sign that
 14:07:51 18 contract?
 14:07:53 19 MR. BURKE: Same objection.
 14:07:53 20 MR. MOORE: Objection.
 14:07:57 21 A. I don't know.
 14:07:58 22 Q. Would it be fair to say that Ken
 14:08:00 23 Hanauer would also have to sign that contract?
 14:08:03 24 A. I don't know.
 14:08:04 25 MR. MOORE: Objection.

Page 189 to Page 192

193

14:08:05 1 Q. Are you familiar with the term
 14:08:07 2 purchase accounting?
 14:08:09 3 A. No.
 14:08:10 4 Q. Was purchase accounting relevant
 14:08:12 5 at all to this proposed merger?
 14:08:15 6 MR. BURKE: Objection.
 14:08:16 7 Foundation.
 14:08:17 8 A. Not that I am -- I don't know.
 14:08:24 9 Q. Okay. Please take a look at
 14:08:25 10 Zoellner Deposition Exhibit 19. Mr. Zoellner,
 14:08:55 11 have you seen this document before?
 14:08:56 12 A. Yes, I was there.
 14:08:57 13 Q. Okay. Does this reflect a special
 14:09:01 14 meeting of the OHSB Board on August 2nd, 1999?
 14:09:05 15 A. Yes.
 14:09:05 16 Q. Now, Mr. Zoellner, can I also
 14:09:08 17 direct your attention to Defendant's Exhibit 1?
 14:09:10 18 A. What?
 14:09:11 19 Q. This document here, Defendant's
 14:09:13 20 Exhibit 1. Do you see this sentence, "Your
 14:09:14 21 Board of Directors unanimously approved the
 14:09:16 22 acquisition and believes that it is in the best
 14:09:19 23 interest of OHSB stockholders." Do you see
 14:09:22 24 that?
 14:09:23 25 A. I see it.

195

14:11:26 1 Provident Financial, correct?
 14:11:26 2 A. That's what it says.
 14:11:26 3 Q. Okay. And if I could flip it
 14:11:26 4 over, it says that "The attached resolutions
 14:11:26 5 were unanimously adopted." Do you see that?
 14:11:26 6 It's the penultimate paragraph on the first
 14:11:26 7 page.
 14:11:32 8 A. By motion Joe Tenoever and
 14:11:32 9 seconded by Hillebrand.
 14:11:34 10 Q. Okay. Now, does that refresh your
 14:11:35 11 recollection as to whether or not the first
 14:11:37 12 part of the sentence "Your Board of Directors
 14:11:38 13 unanimously approved the acquisition" --
 14:11:41 14 MR. BURKE: Objection.
 14:11:41 15 Q. -- refers to this meeting of
 14:11:43 16 August 2nd, 1999?
 14:11:45 17 MR. BURKE: Objection. Asked and
 14:11:46 18 answered.
 14:11:46 19 MR. BRAUTIGAM: I asked if it
 14:11:47 20 refreshes his recollection, Jim. It's a
 14:11:50 21 different question.
 14:11:54 22 MR. BURKE: Do you understand the
 14:11:54 23 question?
 14:11:56 24 THE WITNESS: Let me read this
 14:11:57 25 again. What is the question, please?

WILLIAMS & OLIVER

513-683-9626

194

14:09:24 1 Q. I'd like to direct your attention
 14:09:25 2 to the first part of this sentence, "Your Board
 14:09:30 3 of Directors unanimously approved the
 14:09:31 4 acquisition," stop. Do you see that?
 14:09:34 5 A. I see that.
 14:09:35 6 Q. Do you have that concept in mind?
 14:09:40 7 A. Yes.
 14:09:40 8 Q. Did these minutes for the August
 14:09:42 9 2nd, 1999 meeting refer to the first part of
 14:09:47 10 that sentence?
 14:09:48 11 MR. BURKE: Objection. Calls for
 14:09:49 12 speculation.
 14:09:50 13 A. I do not know.
 14:10:00 14 Q. Okay.
 14:10:00 15 MR. BURKE: Have you had an
 14:10:01 16 opportunity to read Exhibit 19, Mr. Zoellner?
 14:10:05 17 A. I'm reading some of it here.
 14:10:08 18 MR. BURKE: Take your time and
 14:10:09 19 read it before you answer questions about it.
 14:11:26 20 Q. Now, Mr. Zoellner --
 14:11:26 21 MR. BURKE: Have you finished?
 14:11:26 22 A. Yes.
 14:11:26 23 Q. If I could direct your attention
 14:11:26 24 to the back of the document, this is a
 14:11:26 25 resolution approving the merger agreement with

196

14:12:12 1 BY MR. BRAUTIGAM:
 14:12:13 2 Q. The question is: Does the first
 14:12:14 3 part of the sentence here, "Your Board of
 14:12:17 4 Directors unanimously approved the
 14:12:18 5 acquisition," refer to this August 2nd, 1999
 14:12:22 6 special meeting?
 14:12:23 7 MR. BURKE: Objection. Asked and
 14:12:24 8 answered.
 14:12:37 9 A. Is this the same, you're saying?
 14:12:39 10 Q. No, I --
 14:12:40 11 A. I'm not following you.
 14:12:41 12 Q. Okay. My question is this: This
 14:12:44 13 document, Defendant's Exhibit 1, says "Your
 14:12:46 14 Board of Directors unanimously approved the
 14:12:47 15 acquisition."
 14:12:49 16 A. Um-hmm.
 14:12:49 17 Q. Is that correct? That's what the
 14:12:50 18 document says?
 14:12:52 19 A. That's what the document says.
 14:12:53 20 Q. Okay. My question is: When it
 14:12:54 21 says that, is that approval referring to the
 14:12:56 22 approval that was made on August 2nd, 1999 in
 14:13:03 23 this meeting?
 14:13:03 24 MR. BURKE: Objection. Asked and
 14:13:04 25 answered. Already answered.

Page 193 to Page 196

197

14:13:10 1 A. The purpose of this meeting was to
 14:13:12 2 review the final drafts of the definitive
 14:13:15 3 agreement between Provident -- I, I'm not
 14:13:18 4 following. I'm not following you on that.
 14:13:25 5 Q. Okay. Let me do something a
 14:13:26 6 little different. On August 2nd, 1999, OHSL
 14:13:31 7 had seven directors, correct?
 14:13:37 8 A. Let's see how many we've got here.
 14:13:45 9 There was -- well, Ken was -- Tom wasn't there
 14:13:50 10 anymore, Tom Herron.
 14:13:52 11 Q. Right. So you had seven
 14:13:53 12 directors?
 14:13:54 13 A. We had seven, yes.
 14:13:55 14 Q. Okay. Do you see in the
 14:13:56 15 penultimate paragraph it says, "Upon a motion
 14:13:58 16 made by Joseph J. Tenover, seconded by William
 14:14:02 17 R. Hillebrand, the attached resolutions were
 14:14:05 18 unanimously adopted"? Did I read that
 14:14:07 19 correctly?
 14:14:08 20 A. Yes.
 14:14:08 21 Q. And the attached resolutions are
 14:14:09 22 on the back, correct?
 14:14:10 23 A. Yes.
 14:14:11 24 MR. BURKE: Objection. Asked and
 14:14:12 25 answered.

199

14:15:07 1 Defendant's Exhibit 1, it doesn't say anything
 14:15:10 2 about directors present, does it?
 14:15:12 3 A. No.
 14:15:13 4 Q. It says "Your Board of Directors,"
 14:15:14 5 correct?
 14:15:19 6 A. Yes.
 14:15:20 7 Q. And that refers to the eight
 14:15:21 8 directors --
 14:15:21 9 MR. BURKE: Objection.
 14:15:22 10 Q. -- that OHSL started with in 1999,
 14:15:26 11 correct?
 14:15:27 12 MR. BURKE: Objection. That has
 14:15:29 13 been asked and answered as you know, Mr.
 14:15:33 14 Brautigam. This witness has already testified
 14:15:35 15 to this at some length.
 14:15:38 16 Q. I have a question. She can read
 14:15:40 17 it back if you'd like.
 14:15:41 18 A. I don't know what the answer is.
 14:15:43 19 I -- I'm sorry.
 14:15:44 20 Q. Do you have the question?
 14:15:45 21 A. I don't know what the question is.
 14:15:49 22 Q. Okay. You talked about how
 14:15:50 23 unanimous seemed to turn on an interpretation.
 14:15:55 24 A. Yes.
 14:15:55 25 Q. Do you remember that testimony?

WILLIAMS & OLIVER

513-683-9626

198

14:14:12 1 Q. And that's the merger agreement,
 14:14:13 2 correct?
 14:14:14 3 A. Yes.
 14:14:14 4 Q. Now, for the resolutions to have
 14:14:16 5 been unanimously adopted, you needed the vote
 14:14:19 6 of seven directors, correct?
 14:14:22 7 MR. BURKE: Objection.
 14:14:23 8 Argumentative. You may answer.
 14:14:31 9 A. Unanimous. Unanimous would be
 14:14:32 10 seven directors, there were seven.
 14:14:35 11 Q. Okay. Because if you didn't have
 14:14:35 12 the vote of seven directors, it wouldn't be
 14:14:38 13 unanimous, correct?
 14:14:39 14 MR. BURKE: Objection. You may
 14:14:40 15 answer.
 14:14:41 16 A. It's all according to whether
 14:14:42 17 those present -- unanimous of the directors
 14:14:46 18 present. There was one absent here, I think,
 14:14:48 19 wasn't there?
 14:14:49 20 Q. Okay. Why do you --
 14:14:51 21 A. It's all according to the
 14:14:54 22 definition, in my opinion. Was unanimous of
 14:14:58 23 directors present, but it's a matter of
 14:15:01 24 interpretation.
 14:15:06 25 Q. Okay. In this document here,

200

14:15:56 1 A. Yes.
 14:15:57 2 Q. And my question is, this doesn't
 14:15:59 3 talk about any interpretation. This says quite
 14:16:02 4 simply, "Your Board of Directors unanimously
 14:16:04 5 approved the acquisition," correct?
 14:16:07 6 A. That's what it says, yes.
 14:16:10 7 Q. Okay. Now, Mr. McKiernan was out
 14:16:12 8 of the country on August 2nd, 1999, correct?
 14:16:16 9 A. Yes.
 14:16:16 10 Q. And he did not vote in favor of
 14:16:18 11 the transaction, correct?
 14:16:20 12 MR. BURKE: Objection. On that
 14:16:21 13 date?
 14:16:21 14 Q. On that date.
 14:16:23 15 A. On that date.
 14:16:24 16 MR. BURKE: Objection.
 14:16:24 17 A. Yeah.
 14:16:25 18 Q. Was there another date that the
 14:16:27 19 vote on this particular transaction was taking
 14:16:30 20 place?
 14:16:31 21 A. I do not know.
 14:16:32 22 Q. Okay. Is that possible?
 14:16:33 23 MR. BURKE: Anything is possible.
 14:16:34 24 A. It's possible.
 14:16:36 25 MR. BRAUTIGAM: Jim, please, we

Page 197 to Page 200

201

202

14:16:37 1 really don't need you coaching the witness,
14:16:39 2 okay?

14:16:40 3 MR. BURKE: I would argue,
14:16:40 4 Michael, that that's an improper question.

14:16:43 5 MR. BRAUTIGAM: This is like
14:16:44 6 stereo. We say "anything is possible" and then
14:16:52 7 the witness repeats that. This is amazing.

14:16:52 8 MR. BURKE: Objection, vague.
14:16:52 9 Objection to form. You may answer. What's the
14:17:01 10 question?

14:17:02 11 BY MR. BRAUTIGAM:

14:17:03 12 Q. The question is: Is there any
14:17:06 13 other possible meeting where the merger between
14:17:10 14 OHSL and Provident was approved?

14:17:14 15 A. Any other meeting where it was
14:17:15 16 approved? I, I don't remember.

14:17:21 17 Q. Okay. So we have Mr. Herron no
14:17:23 18 longer with us on August 2nd?

14:17:27 19 A. That is true.

14:17:27 20 Q. So he did not vote in favor of the
14:17:29 21 transaction, correct?

14:17:30 22 MR. BURKE: Objection.

14:17:30 23 A. He was no longer a director.

14:17:32 24 Q. And, in fact, he was against the
14:17:34 25 merger, correct?

14:17:35 1 MR. BURKE: Objection.

14:17:35 2 A. That's what it says in his letter.

14:17:39 3 Q. Okay. And with respect to Mr.
14:17:41 4 McKiernan, he did not vote in favor of the
14:17:43 5 transaction because he was out of the country,
14:17:45 6 correct?

14:17:51 7 A. Unless he voted absentee, voted
14:17:56 8 before he left or after he came back. I do not
14:17:59 9 know. I can't answer that.

14:18:04 10 Q. Okay. So your understanding is
14:18:05 11 that the other directors who were there voted
14:18:08 12 in favor of the transaction, correct?

14:18:11 13 A. Yes.

14:18:15 14 Q. Okay. Do you understand Mr.
14:18:15 15 Hanauer to have voted in favor of the
14:18:17 16 transaction on August 2nd, 1999?

14:18:23 17 A. Who was that, Hanauer?

14:18:24 18 Q. Hanauer.

14:18:25 19 A. I -- the minutes would have to
14:18:27 20 show me, the records. I wouldn't know if --

14:18:29 21 Q. Well, they're right in front of
14:18:31 22 you.

14:18:32 23 A. August 2nd, does it say -- yeah,
14:18:37 24 it says directors were present. That's a
14:19:01 25 matter of interpretation of unanimous again.

203

204

14:19:03 1 It says there that the motion was made by
14:19:08 2 Tenover and seconded by Hillebrand and
14:19:11 3 resolutions were unanimously adopted.

14:19:14 4 Q. Okay. Why does that cause you to
14:19:17 5 say something about the interpretation of
14:19:19 6 unanimous?

14:19:20 7 A. Well, because all of the directors
14:19:21 8 weren't there.

14:19:23 9 Q. Okay.

14:19:23 10 A. There was one missing, Tom
14:19:25 11 McKiernan.

14:19:27 12 Q. Okay. Tom McKiernan --

14:19:28 13 MR. BURKE: Wait.

14:19:29 14 A. Am I right?

14:19:30 15 MR. BURKE: Go ahead.

14:19:30 16 A. Tom McKiernan wasn't there.

14:19:33 17 Q. Okay.

14:19:33 18 A. And we discussed that. Whether he
14:19:35 19 voted before he left or after he got back on
14:19:37 20 the matter, I don't know.

14:19:39 21 Q. Right. But Mr. Hanauer was there
14:19:40 22 and he voted in favor of the merger, correct?

14:19:42 23 A. Yes.

14:19:42 24 Q. Okay.

14:19:43 25 A. That's what it says, yes.

14:19:47 1 Q. And during -- on July 22nd, he had
14:19:50 2 voted against the merger, correct?

14:19:52 3 A. The minutes say that.

14:19:59 4 Q. And --

14:20:07 5 MR. BURKE: July 22nd?

14:20:09 6 MR. MOORE: Exhibit 17.

14:20:12 7 Q. Talking about Hanauer?

14:20:13 8 MR. BURKE: You said Hanauer.

14:20:14 9 Q. No, no, no. Mr. Zoellner, I
14:20:16 10 misspoke. On July 22nd, 1999, Mr. Hanauer had
14:20:20 11 abstained from that vote; is that correct?

14:20:27 12 A. Let me get it again. July 22nd?

14:20:31 13 Q. Yes.

14:20:34 14 MR. BURKE: Document speaks for
14:20:34 15 itself, Mr. Brautigam. I don't know why this
14:20:37 16 witness has to keep reading lines from the
14:20:39 17 documents. I mean, this is just needlessly
14:20:42 18 prolonging it.

14:20:44 19 MR. MOORE: I would object as
14:20:45 20 well.

14:20:54 21 Q. Okay. Mr. Zoellner, Bill
14:20:58 22 Hillebrand voted in favor of the merger on
14:21:00 23 August 2nd, 1999, correct?

14:21:03 24 A. Yes.

14:21:04 25 MR. BURKE: We're on a different

14:21:06 1 document. August 2nd?
 14:21:08 2 Q. Yes. And Mr. Huckle voted in favor
 14:21:10 3 of the merger on August 2nd, 1999, correct?
 14:21:13 4 A. Yes.
 14:21:15 5 Q. And we talked about Mr. McKiernan.
 14:21:18 6 Mr. Tenoever voted in favor of the transaction
 14:21:21 7 on August 2nd, 1999, correct?
 14:21:25 8 A. Does it say that here? I can't
 14:21:26 9 find it in there.
 14:21:27 10 Q. Well, it says motion unanimously
 14:21:32 11 adopted.
 14:21:34 12 A. The motion -- the attached
 14:21:37 13 resolution was unanimously adopted.
 14:21:39 14 Q. Okay. And that leaves Mr.
 14:21:42 15 Brinker, correct?
 14:21:43 16 A. Yes.
 14:21:43 17 Q. Now --
 14:21:45 18 MR. BURKE: Objection to form.
 14:21:46 19 Q. -- for the OHSL Board to be able
 14:21:48 20 to say that this was unanimous in Defendant's
 14:21:50 21 Exhibit 1, Mr. Brinker would have had to vote
 14:21:53 22 in favor of the transaction, correct?
 14:21:57 23 MR. BURKE: Objection,
 14:21:57 24 foundation --
 14:21:58 25 MR. MOORE: Objection.

14:23:01 1 Q. I think so. Yeah.
 14:23:02 2 MR. BURKE: Okay.
 14:23:03 3 Q. Mr. Zoellner, Mr. Brinker did, in
 14:23:05 4 fact, vote on July 22nd, 1999, correct?
 14:23:09 5 MR. BURKE: Objection. Go ahead.
 14:23:11 6 A. If the minutes say so, that would
 14:23:18 7 be correct. I can't carry these over from one
 14:23:18 8 to the other, okay?
 14:23:20 9 Q. And no tie needed to be broken on
 14:23:22 10 July 22nd, 1999, correct?
 14:23:24 11 MR. BURKE: Objection. Calls for
 14:23:25 12 speculation. Assumes facts not in evidence. I
 14:23:28 13 think he said if the minutes say so. You may
 14:23:30 14 answer.
 14:23:32 15 A. Whatever the minutes say on there
 14:23:33 16 now. I'm starting to get confused on this.
 14:23:36 17 They -- I would go by whatever the minutes say
 14:23:39 18 would be true, because we approved those each
 14:23:43 19 time we met.
 14:23:45 20 Q. Well, Mr. Zoellner, the minutes
 14:23:48 21 say that the motion to merge Oak Hills with
 14:23:53 22 Provident was unanimously adopted. Do you see
 14:23:56 23 that?
 14:23:57 24 MR. BURKE: Objection.
 14:23:58 25 Mischaracterizes the document. The document

14:21:59 1 MR. BURKE: -- as to Exhibit 1.
 14:22:01 2 You may answer.
 14:22:04 3 A. Well, Norb Brinker being the
 14:22:08 4 president or chairman, by -- I'm not a lawyer,
 14:22:13 5 but by some law that he -- the president or
 14:22:17 6 chairman doesn't vote unless there's a tie, so
 14:22:20 7 that wouldn't have to -- he wouldn't have to be
 14:22:25 8 included in that unanimous, to my thinking.
 14:22:28 9 Q. Was Mr. Brinker eligible to vote
 14:22:30 10 at the August 2nd, 1999 meeting?
 14:22:33 11 MR. BURKE: Objection. Calls for
 14:22:33 12 a legal conclusion.
 14:22:34 13 A. I don't know. That would be up to
 14:22:35 14 the legal interpretation.
 14:22:37 15 Q. You don't know if the chairman of
 14:22:38 16 the Board was eligible to vote on --
 14:22:41 17 MR. BURKE: That's exactly what he
 14:22:43 18 just said, counsel.
 14:22:44 19 Q. -- on a resolution?
 14:22:46 20 MR. BURKE: That's exactly what he
 14:22:47 21 just said. Asked and answered.
 14:22:48 22 A. Well, like I said, the --
 14:22:51 23 Q. Mr. Brinker voted --
 14:22:53 24 MR. BURKE: Wait. Did you get an
 14:22:55 25 answer?

14:24:01 1 speaks for itself.
 14:24:02 2 Q. Do you see that, Mr. Zoellner?
 14:24:05 3 A. Upon a motion, yeah, by Joe
 14:24:08 4 Tenoever.
 14:24:10 5 Q. And that's not correct, is it?
 14:24:12 6 MR. BURKE: Objection.
 14:24:13 7 A. I don't know. I don't know.
 14:24:28 8 Q. Take a look at Defendant's Exhibit
 14:24:29 9 1, please. Do you see the phrase "Your Board
 14:24:32 10 of Directors unanimously approved the
 14:24:33 11 acquisition"?
 14:24:35 12 MR. BURKE: Objection. Asked and
 14:24:36 13 answered 15 times. He's seen it before.
 14:24:39 14 What's the question?
 14:24:41 15 Q. That's not an accurate statement,
 14:24:43 16 is it, Mr. Zoellner?
 14:24:45 17 MR. BURKE: Objection.
 14:24:54 18 A. What's the question on that
 14:24:55 19 statement? On that paragraph?
 14:24:57 20 Q. That part of that sentence is not
 14:24:59 21 accurate, meaning "Your Board of Directors
 14:25:02 22 unanimously approved the acquisition." It's
 14:25:05 23 simply not accurate?
 14:25:07 24 MR. BURKE: Objection.
 14:25:07 25 MR. MOORE: Objection.

14:25:08 1 MR. BURKE: Argumentative. You
 14:25:09 2 may answer.
 14:25:27 3 A. There again, where I have trouble
 14:25:28 4 is that unanimous bit. It's all according to
 14:25:31 5 the interpretation of what's unanimous.
 14:25:33 6 Unanimous of who's there or, or -- and as far
 14:25:37 7 as the chairman goes, it's my thinking it's
 14:25:42 8 a -- I'd have to ask legal whether that's the
 14:25:45 9 way it --
 14:25:52 10 Q. Are you finished?
 14:25:53 11 A. I don't know. I don't know.
 14:25:55 12 Q. Mr. Zoellner, did you do anything
 14:25:59 13 personally to review the proxy materials before
 14:26:01 14 they were sent out to the shareholders?
 14:26:07 15 A. Oh, I don't remember. I don't
 14:26:08 16 remember.
 14:26:10 17 Q. Were drafts of the proxy materials
 14:26:15 18 presented in Board meetings?
 14:26:17 19 A. I don't know.
 14:26:17 20 Q. Do you feel that you had any
 14:26:19 21 responsibility to the shareholders to make sure
 14:26:22 22 that the proxy materials were accurate?
 14:26:26 23 MR. BURKE: Objection. Calls for
 14:26:27 24 a legal conclusion. You may answer.
 14:26:29 25 MR. MOORE: Objection.

211

14:27:38 1 correct?
 14:27:39 2 A. Um-hmm.
 14:27:39 3 Q. And would it be fair to say --
 14:27:42 4 A. Who returned them?
 14:27:43 5 Q. No. Would it be fair to say that
 14:27:45 6 they came from the Oak Hills and Provident
 14:27:49 7 Boards of Directors?
 14:27:50 8 MR. BURKE: Objection. Calls for
 14:27:51 9 a legal conclusion. You may answer.
 14:27:52 10 A. No. I -- I can't say that.
 14:27:55 11 Q. Do you believe that the Oak Hills
 14:27:56 12 directors had any responsibility whatsoever for
 14:27:59 13 the content of the proxy materials?
 14:28:01 14 MR. BURKE: Objection. Asked and
 14:28:03 15 answered. You may answer it.
 14:28:06 16 A. No.
 14:28:07 17 Q. Why not?
 14:28:08 18 A. Because that's all the -- with our
 14:28:12 19 management and with our legal.
 14:28:19 20 Q. So you feel that if the proxy
 14:28:26 21 materials are in some way inaccurate, that the
 14:28:30 22 responsibility lies with OHSL's management and
 14:28:34 23 with OHSL's counsel, which at that time was
 14:28:36 24 Dinsmore & Shohl, correct?
 14:28:39 25 MR. BURKE: Objection.

14:26:31 1 THE WITNESS: Weren't we asked
 14:26:31 2 that before?
 14:26:32 3 MR. BURKE: Yeah.
 14:26:45 4 THE WITNESS: Give me the question
 14:26:46 5 again.
 14:26:46 6 BY MR. BRAUTIGAM:
 14:26:46 7 Q. Mr. Zoellner, do you as an OHSL
 14:26:49 8 director feel that you had any responsibility
 14:26:51 9 to make sure that the proxy materials were
 14:26:56 10 accurate?
 14:26:57 11 MR. BURKE: Objection. Calls for
 14:26:58 12 a legal conclusion. Asked and answered. You
 14:27:00 13 may answer.
 14:27:00 14 MR. MOORE: Objection.
 14:27:07 15 A. That was, that was usually all
 14:27:09 16 handled by management. And we had -- we told
 14:27:15 17 management what to do and it was done by them.
 14:27:19 18 As far as that's -- doing it, no.
 14:27:22 19 Q. Mr. Zoellner, who did the proxy
 14:27:24 20 materials come from?
 14:27:31 21 MR. BURKE: Objection.
 14:27:31 22 Foundation.
 14:27:32 23 A. Who made up the proxies?
 14:27:34 24 Q. No. Who did they come from? You
 14:27:36 25 said they were sent to the shareholders,

212

14:28:39 1 MR. MOORE: Objection.
 14:28:39 2 MR. BURKE: Assumes facts not in
 14:28:41 3 evidence. You may answer.
 14:28:43 4 A. No, I -- I don't think so.
 14:28:46 5 Q. Okay. Who do you think was
 14:28:47 6 responsible for the proxy materials?
 14:28:50 7 A. Ken Hanauer was.
 14:28:52 8 Q. Only Ken Hanauer?
 14:28:53 9 A. Well, probably some of the other
 14:28:56 10 management team also worked on it.
 14:28:59 11 Q. Okay. Do you believe any OHSL
 14:29:02 12 directors were responsible in any way for the
 14:29:04 13 content of the proxy materials?
 14:29:06 14 MR. BURKE: Objection. Asked and
 14:29:07 15 answered. You may answer.
 14:29:12 16 A. Well, they designated the
 14:29:14 17 responsibility to management and --
 14:29:16 18 Q. Mr. Zoellner, you testified -- you
 14:29:21 19 said at the break that you were a Navy pilot,
 14:29:24 20 correct?
 14:29:24 21 A. Yeah.
 14:29:25 22 Q. And in the Navy, don't they say
 14:29:27 23 that you can delegate authority, but never
 14:29:29 24 responsibility?
 14:29:30 25 MR. BURKE: Objection to

213

214

14:29:30 1 relevance.
 14:29:32 2 MR. MOORE: Objection.
 14:29:35 3 A. I don't know. I don't know.
 14:29:36 4 Q. Have you ever heard the expression
 14:29:37 5 that you can designate authority but not
 14:29:40 6 responsibility?
 14:29:41 7 A. Yes, I've heard of the expression.
 14:29:43 8 Q. Okay. And what do you understand
 14:29:44 9 that expression to mean?
 14:29:45 10 MR. BURKE: Objection to
 14:29:46 11 relevance.
 14:29:47 12 A. They can't get rid of the
 14:29:49 13 responsibility.
 14:29:52 14 Q. Okay. And do you believe that Oak
 14:29:57 15 Hills' Board of Directors was over management
 14:30:00 16 in some way?
 14:30:01 17 MR. BURKE: Objection to form.
 14:30:11 18 A. Well, the Board of Directors was
 14:30:11 19 over management, yes.
 14:30:11 20 Q. Right. In other words, management
 14:30:11 21 serves at the pleasure of the Board of
 14:30:13 22 Directors?
 14:30:13 23 A. Right.
 14:30:13 24 Q. If you wanted to kick Ken Hanauer
 14:30:15 25 out, the Board of Directors could do that,

14:30:17 1 correct?
 14:30:18 2 A. Correct.
 14:30:18 3 Q. Same thing for the CFO, Pat
 14:30:21 4 Condren, correct?
 14:30:23 5 A. Pat Condren, yeah. That's --
 14:30:26 6 Q. That was the name you were looking
 14:30:27 7 for?
 14:30:28 8 A. Yeah. Yes.
 14:30:30 9 Q. And I just want to see if I
 14:30:32 10 understand your testimony correctly, that
 14:30:34 11 you're saying that the OHSL Board had no
 14:30:37 12 responsibility for the proxy materials, except
 14:30:39 13 Ken Hanauer?
 14:30:40 14 A. Well, I don't think they had no
 14:30:42 15 responsibility. They're responsible for a lot
 14:30:45 16 of things.
 14:30:47 17 Q. Okay.
 14:30:47 18 A. But they designated that
 14:30:48 19 responsibility to Ken Hanauer as our manager.
 14:30:54 20 Q. Okay. Did you learn at some point
 14:31:04 21 that Ken Hanauer voted his personal shares
 14:31:07 22 against the transaction?
 14:31:08 23 A. No, I knew nothing about that.
 14:31:10 24 Q. Have you since learned that?
 14:31:12 25 A. Since I've heard that, yes.

215

216

14:31:14 1 Q. Okay. When's the first time you
 14:31:15 2 heard that?
 14:31:20 3 A. I don't know.
 14:31:21 4 Q. This was discussed at your
 14:31:22 5 luncheon meetings at some point, correct?
 14:31:25 6 A. No.
 14:31:28 7 Q. Okay. Do you --
 14:31:29 8 A. I don't remember.
 14:31:30 9 Q. You testified previously that
 14:31:32 10 you're a fair man. Do you think it was fair
 14:31:34 11 for Mr. Hanauer to vote one way as a director
 14:31:38 12 and yet vote his personal shares against the
 14:31:40 13 transaction?
 14:31:41 14 MR. BURKE: Objection. Asked and
 14:31:41 15 answered.
 14:31:42 16 MR. MOORE: Objection.
 14:31:43 17 MR. BURKE: I know this was asked
 14:31:44 18 and answered. You can answer again.
 14:31:52 19 A. It is. He can vote them the way
 14:31:54 20 he wants to. He isn't obliged to do it one way
 14:31:59 21 or another.
 14:32:01 22 Q. Well, that's true for any
 14:32:05 23 shareholder, correct?
 14:32:06 24 A. That's correct.
 14:32:07 25 Q. But do you think that because of

14:32:08 1 Mr. Hanauer's special position as both a Board
 14:32:12 2 member and as a member of management that the
 14:32:15 3 shareholders might be interested in how he
 14:32:18 4 voted his personal shares?
 14:32:20 5 MR. BURKE: Objection. Calls for
 14:32:21 6 speculation.
 14:32:22 7 MR. MOORE: Objection.
 14:32:22 8 A. I do not know that.
 14:32:26 9 Q. Don't you think that Mr. Hanauer
 14:32:28 10 was speaking out of both sides of his mouth, so
 14:32:31 11 to speak, by voting one way as a shareholder
 14:32:34 12 and voting another way as a director?
 14:32:37 13 MR. BURKE: Objection.
 14:32:38 14 MR. MOORE: Objection.
 14:32:38 15 A. I do not like to make judgment on
 14:32:41 16 him on whether he did -- whether it was right
 14:32:43 17 or wrong.
 14:32:44 18 Q. Mr. Zoellner, I am entitled to
 14:32:46 19 your opinion. Do you believe what Mr. Hanauer
 14:32:49 20 did by voting one way as a shareholder and one
 14:32:52 21 way as a director was correct?
 14:32:53 22 MR. BURKE: Objection.
 14:32:54 23 A. I don't know if it was correct,
 14:32:55 24 but he was allowed to do it.
 14:32:57 25 Q. Do you think it was fair?

217

14:32:59 1 MR. BURKE: Objection.
 14:33:01 2 A. Well, that was -- that was another
 14:33:02 3 question. I haven't looked at it that way.
 14:33:04 4 Q. You haven't looked at it what way?
 14:33:06 5 A. Whether it was fair or not. I
 14:33:07 6 haven't given it any thought.
 14:33:09 7 Q. Can you take a moment and think
 14:33:10 8 about it?
 14:33:11 9 A. Okay.
 14:33:12 10 Q. Okay. Do you believe that what
 14:33:12 11 Mr. Hanauer did with respect to voting one way
 14:33:15 12 as a director and the opposite way as a
 14:33:17 13 shareholder was fair to the other OHSL
 14:33:21 14 shareholders?
 14:33:22 15 MR. BURKE: Let the record reflect
 14:33:23 16 you gave him five seconds to review the --
 14:33:26 17 MR. BRAUTIGAM: Mr. Zoellner, take
 14:33:27 18 as much time as you need.
 14:33:30 19 MR. BURKE: Objection. Asked and
 14:33:31 20 answered. Calls for speculation. Asked and
 14:33:34 21 answered. You may answer, Mr. Zoellner.
 14:33:44 22 A. It's a matter of opinion. In my
 14:33:46 23 opinion he can do what he wants to do, and he's
 14:33:48 24 entitled to vote any way he wants.
 14:33:52 25 Q. Okay.

219

14:34:52 1 A. You've asked that question.
 14:34:55 2 MR. MOORE: Objection.
 14:34:56 3 Q. You haven't answered it.
 14:34:57 4 A. I haven't answered it?
 14:34:58 5 MR. BURKE: I would disagree with
 14:34:59 6 you, counsel. I believe he has answered it
 14:35:02 7 several times. He --
 14:35:04 8 MR. BRAUTIGAM: Jim, the last part
 14:35:04 9 of his answer was I can't say whether it's fair
 14:35:07 10 or not.
 14:35:09 11 MR. BURKE: Counsel, if he doesn't
 14:35:11 12 have an opinion --
 14:35:13 13 MR. BRAUTIGAM: If he has an
 14:35:14 14 opinion, he has to give it to me.
 14:35:16 15 MR. BURKE: He's told you he does
 14:35:16 16 not have an opinion.
 14:35:16 17 BY MR. BRAUTIGAM:
 14:35:18 18 Q. Is that true, Mr. Zoellner?
 14:35:19 19 A. That's true. I do not have an
 14:35:20 20 opinion at this point.
 14:35:23 21 Q. Okay. Mr. Hanauer ran the special
 14:35:25 22 meeting of shareholders on October 25th, 1999,
 14:35:29 23 correct?
 14:35:30 24 A. Um-hmm.
 14:35:31 25 MR. BURKE: Objection.

218

14:33:53 1 A. And I am not a judge of whether
 14:33:56 2 it's fair for him or isn't fair.
 14:34:03 3 Q. Mr. Zoellner, I'm afraid that I am
 14:34:05 4 entitled to your opinion with respect to this
 14:34:06 5 matter.
 14:34:07 6 A. I just gave it to you.
 14:34:08 7 MR. BURKE: He just gave it to
 14:34:09 8 you, counselor, and he doesn't have to give you
 14:34:11 9 anything other than what his best recollection
 14:34:13 10 is. He doesn't have to have an opinion.
 14:34:18 11 MR. MOORE: That's correct.
 14:34:16 12 MR. BRAUTIGAM: Can you read back
 14:34:16 13 his answer, please?
 14:34:16 14 (Record read by Reporter.)
 14:34:34 15 MR. BRAUTIGAM: Okay. Move to
 14:34:35 16 strike as unresponsive.
 14:34:37 17 BY MR. BRAUTIGAM:
 14:34:38 18 Q. Mr. Zoellner, I understand that
 14:34:39 19 you believe that Mr. Hanauer can vote any way
 14:34:43 20 he wants, and we're in agreement on that.
 14:34:44 21 A. Um-hmm.
 14:34:45 22 Q. My question is: Is it fair that
 14:34:46 23 he do that without telling the shareholders how
 14:34:49 24 he voted his personal shares?
 14:34:51 25 MR. BURKE: Objection.

220

14:35:31 1 Foundation.
 14:35:32 2 Q. And you did not know at the time
 14:35:33 3 that he had voted his personal shares against
 14:35:35 4 the transaction, correct?
 14:35:37 5 A. That is correct.
 14:35:39 6 Q. And now you've learned that he
 14:35:41 7 voted his personal shares against the
 14:35:47 8 transaction, correct?
 14:35:47 9 A. Yes.
 14:35:47 10 Q. Does that leave a bad taste in
 14:35:47 11 your mouth that the purpose of the meeting was
 14:35:49 12 to approve the transaction and the guy who ran
 14:35:52 13 the meeting voted his personal shares against
 14:35:54 14 the transaction?
 14:35:55 15 A. No.
 14:35:56 16 MR. BURKE: Objection to form.
 14:35:57 17 MR. MOORE: Objection.
 14:35:59 18 Q. No?
 14:35:59 19 A. That doesn't bother me.
 14:36:00 20 Q. Why not?
 14:36:01 21 A. He's entitled to do what he wants
 14:36:02 22 to do, vote it the way he wants.
 14:36:03 23 Q. Mr. Zoellner, my question doesn't
 14:36:05 24 go to Mr. Hanauer's entitlement to vote however
 14:36:08 25 he wants. My question is to the shareholder

221

14:36:11 1 knowledge. Do you think that Mr. Hanauer
14:36:14 2 should have disclosed at the special meeting or
14:36:18 3 otherwise, hey, I voted as a director to
14:36:20 4 approve this merger, but as a shareholder I
14:36:23 5 voted against it?

14:36:24 6 MR. BURKE: Objection.

14:36:27 7 A. I don't think it -- none of us
14:36:30 8 after we vote say, oh, hey, I voted for this or
14:36:34 9 voted for that or didn't vote. I don't think
14:36:36 10 that's necessary.

14:36:40 11 Q. Mr. Zoellner, you'd agree that the
14:36:43 12 proxy materials contain a recommendation for
14:36:47 13 how shareholders should vote, correct?

14:36:49 14 MR. BURKE: Objection.

14:36:51 15 A. Not that I remember. It didn't
14:36:54 16 tell them how to vote.

14:36:55 17 Q. It doesn't tell them how to vote?
14:36:57 18 Okay. Let's take a look at the document. Do
14:37:06 19 you have Defendant's 1, "The Board unanimously
14:37:09 20 recommends and advises that you approve the
14:37:10 21 acquisition at the special meeting so that the
14:37:13 22 transaction may be completed"?

14:37:16 23 MR. BURKE: Referring to that
14:37:16 24 sentence on the first page of Defendant's
14:37:18 25 Exhibit 1.

223

14:38:15 1 A. No.

14:38:15 2 Q. Do you have anything against the
14:38:17 3 accuracy of the proxy materials?

14:38:21 4 A. I thought it was accurate.

14:38:24 5 Q. I thought you testified you didn't
14:38:25 6 review the proxy materials.

14:38:27 7 A. Well, didn't we just do that here?

14:38:30 8 MR. BURKE: Objection. Misstates
14:38:30 9 prior testimony. You may answer. Go ahead.

14:38:35 10 A. We talked about it today, didn't
14:38:37 11 we? About the proxy material?

14:38:40 12 Q. Well, we're not done talking about
14:38:41 13 the proxy materials yet, but let me move
14:38:44 14 forward. Okay. This is --

14:38:47 15 MR. MOORE: I'll move to strike
14:38:48 16 that last question and answer exchange. I just
14:38:51 17 think that's a complete mischaracterization of
14:38:53 18 the questions that have been asked.

14:38:55 19 MR. BURKE: I'm going to take five
14:38:56 20 minutes to use the bathroom.

14:39:00 21 MR. BRAUTIGAM: Fine, let's take a
14:39:00 22 short break.

14:39:02 23 MR. BURKE: Fine.

14:39:02 24 (Brief recess.)

14:42:14 25 MR. BURKE: Have you had a chance

222

14:37:18 1 A. Oh, okay.

14:37:19 2 Q. Does that sound like advice to
14:37:21 3 you?

14:37:21 4 MR. BURKE: Objection. Calls for
14:37:23 5 speculation.

14:37:28 6 A. That's an opinion, yes.

14:37:30 7 Q. It's a recommendation, correct?

14:37:32 8 A. Yes, recommendation.

14:37:36 9 Q. Now, does it bother you that Mr.
14:37:37 10 Hanauer as part of the Board made this
14:37:40 11 recommendation, but voted personally against
14:37:42 12 his own recommendation?

14:37:43 13 A. No, it doesn't bother me.

14:37:49 14 Q. Okay. Mr. Zoellner, is there
14:37:51 15 anything you wish you would have done
14:37:52 16 differently with respect to this merger
14:37:54 17 transaction?

14:37:56 18 MR. BURKE: Objection to
14:37:56 19 relevance. You may answer.

14:38:01 20 A. Nothing to do with the merger of
14:38:03 21 that, I don't think, no. I don't have anything
14:38:07 22 against it.

14:38:09 23 Q. Do you have anything against the
14:38:11 24 way the proxy materials were prepared?

14:38:15 25 MR. BURKE: Objection.

224

14:42:15 1 to review that?

14:42:16 2 THE WITNESS: No, I got
14:42:16 3 distracted.

14:42:18 4 MR. MOORE: That's my fault.

14:42:18 5 BY MR. BRAUTIGAM:

14:42:20 6 Q. Mr. Zoellner, if you --

14:42:22 7 MR. BURKE: If the witness can
14:42:23 8 read the document you just handed to him, I'd
14:42:25 9 appreciate it.

14:42:26 10 Q. He doesn't have to read it. Mr.
14:42:28 11 Zoellner, I have handed you what has been
14:42:30 12 marked as --

14:42:33 13 MR. BURKE: Mr. Brautigam, I would
14:42:33 14 like the witness to review the document.

14:42:35 15 MR. BRAUTIGAM: Jim, you're
14:42:36 16 obviously trying to run out the clock. He
14:42:40 17 doesn't need to. Do you want him to read the
14:42:42 18 proxy materials? He doesn't have to.

14:42:45 19 MR. BURKE: You have a four page
14:42:46 20 document here. What pages are you going to
14:42:48 21 examine him on so he can review it?

14:42:51 22 MR. BRAUTIGAM: I'll get to it,
14:42:52 23 Jim.

14:42:52 24 BY MR. BRAUTIGAM:

14:42:53 25 Q. Mr. Zoellner, have you seen this